

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

**CIVIL NO. 2:07CV16-1-T
(2:04CR93)**

JOHN WESLEY BLACKMON,)	
)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

THIS MATTER is before the Court on the Petitioner's motion for an extension of time in which to file a motion for a certificate of appealability.¹

Petitioner's Motion for Extension of Time, filed September 4, 2008.

"When the United States . . . is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered." **Fed. R. App. P. 4(a)(1)(B)**. The Judgment herein was entered

¹ Because there is no statutory authority for the Court to extend time for filing a motion for a certificate of appealability, the Court is construing Petitioner's motion as one for an extension of time in which to file notice of appeal.

by the Court on July 23, 2008; therefore, Petitioner's notice of appeal must be filed before September 21, 2008.²

The district court may extend the time to file a notice of appeal if . . . regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause. . . . No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

Fed. R. App. P. 4(a)(5)(A) & (C).

Petitioner advises that the prison facility where he is located was on "institutional lockdown" until August 27, 2008, and the law library was unavailable for inmate use. **Petitioner's Motion at 2.** Because he was unable to use the law library, he was prevented from filing a timely notice of appeal. *Id.* He states the prison facility has now "regained normal operations," and the law library is accessible. *Id.* The Court finds the Petitioner has demonstrated good cause to extend the deadline for filing a notice of appeal an additional 30 days.

² Because September 21, 2008, fell on a Sunday, Petitioner's notice of appeal was due to be filed Monday, September 22, 2008. **See Fed. R. Civ. P. 6(a)(3)** ("Include the last day of the period unless it is a Saturday, Sunday, [or] legal holiday[.] . . . When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, [or] legal holiday[.]").

IT IS, THEREFORE, ORDERED that the Petitioner's motion is **ALLOWED**, and he has 30 days from and after September 22, 2008, in which to file a notice of appeal.

Signed: September 23, 2008

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

